

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CRIMINAL APPLICATION No. 890 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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KANTABEN DEVABHAI BAHADUR & 1 - Applicant(s)
Versus
DEVABHAI MAGANBHAI BAHADUR & 1 - Respondent(s)

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Appearance :

MR KL DAVE for Applicant(s) : 1 - 2.

MR YN RAVANI for Respondent(s) : 1,

MR DIPEN DESAI, APP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 18/10/2007

ORAL JUDGMENT

Petitioner No.1 is a lady and petitioner No.2 is her son. They had filed an application before the court below claiming maintenance under section 125 of

the Criminal Procedure Code from respondent No.1. During the pendency of the proceedings, petitioner No.2 attained majority and it is stated that he no longer stays with petitioner No.1. It is further stated that petitioner No.1 is an aged lady who requires maintenance to sustain herself since she has no source of income.

2. The courts below though granted the prayer for maintenance in favour of petitioner No.2, held that petitioner No.1 is not a legally wedded wife of respondent No.1. On that premise, her application under section 125 of the Criminal Procedure Code was rejected.

3. After some discussion, learned advocate for the petitioner No.1 submitted that she may be given an opportunity to lead full evidence to establish her claim of valid marriage and maintenance from her husband.

4. Considering that proceedings under section 125 of the Criminal Procedure Code are in summary nature, I do not find any difficulty in granting an opportunity to the petitioner to lead full evidence before the competent court under the provisions of Hindu Marriage Act, if so desires. For this purpose, counsel for the petitioner is permitted to withdraw the proceedings pertaining to her maintenance initiated before the courts below. Consequently, the observations and conclusions made in the impugned

orders also stand obliterated. If petitioner No.1 files an appropriate application before the Competent Court under the Hindu Marriage Act for maintenance, the concerned court shall examine the same in accordance with law on the available material on record, expeditiously.

5. With the above observations and directions, the petition is disposed of. Rule is discharged.

(Akil Kureshi, J.)

(vjn)